

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ADAM JAY STONE,

Plaintiff,

v.

ANDERSON, et al.,

Defendants.

No. 1:21-cv-01461-SAB (PC)

Appeal No. 25-3589

ORDER DENYING PLAINTIFF'S MOTION
TO PROCEED IN FORMA PAUPERIS ON
APPEAL, AND DIRECTING CLERK OF
COURT TO SERVE THIS ORDER ON
NINTH CIRCUIT COURT OF APPEALS

(ECF Nos. 317, 318)

Following a jury trial in this action pursuant to 42 U.S.C § 1983, judgment was entered in favor of Defendants.

On May 27, 2025, Plaintiff filed a request and form application to proceed in forma pauperis on appeal. (ECF Nos. 317, 318.)

On June 5, 2025, Plaintiff filed a notice of appeal, which was assigned case number 25-3589. (ECF Nos. 323, 325.) On this same date, Plaintiff was directed to pay the \$605.00 filing fee for the appeal. (ECF No. 324.)

28 U.S.C. § 1915(a)(1) permits a plaintiff to bring a civil action, or appeal therein, "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff's "is unable to pay such fees or give security therefor." A prisoner seeking to bring a civil action must, in addition to filing an affidavit, "submit a certified copy of

1 the trust fund account statement ... for the 6-month period immediately preceding the filing of the
2 complaint ... obtained from the appropriate official of each prison at which the prisoner is or was
3 confined.” 28 U.S.C. § 1915(a)(2).

4 Rule 24 of the Federal Rules of Appellate Procedure provides in relevant part:

5 (1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-
6 court action who desires to appeal in forma pauperis must file a motion in the district
court. The party must attach an affidavit that:

7 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's
8 inability to pay or to give security for fees and costs;

9 (B) claims an entitlement to redress; and

10 (C) states the issues that the party intends to present on appeal.

11 Fed. R. App. P. 24(a)(1).

12 Plaintiff has filed an application declaring that, due to his poverty, he is unable to pre-pay
13 the full amount of fees and costs for the appellate proceedings. Plaintiff attached a copy his
14 inmate statement report from Kern Valley State Prison.¹ (ECF No. 318.) The statement provides
15 the activity in Plaintiff's inmate trust account from November 22, 2024 to May 22, 2025, and
16 reflects that Plaintiff currently has an available sum of \$4,631.18 on account to his credit at Kern
17 Valley State Prison. Thus, the available balance in Plaintiff's account reflects that he can pay the
18 \$605.00 filing fee for the appellate action.

19 Based on the foregoing, the information that Plaintiff has provided to the Court reflects
20 that he is financially able to pre-pay the entire filing fee to commence this action. Although the
21 Ninth Circuit Court of Appeals has held that “the filing fee ... should not take the prisoner's last
22 dollar,” Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995), in these circumstances, Plaintiff
23 has sufficient funds to pre-pay the \$605.00 filing fee with money left over. Therefore, Plaintiff's
24 motion to proceed in forma pauperis on appeal must be denied. Accordingly, Plaintiff's motion
25 to proceed in forma pauperis on appeal shall be denied, and the appellate fee of \$605.00 remains

27 ¹ Plaintiff's motion to proceed in forma pauperis in this Court was also denied because he had sufficient funds, and
28 the \$405.00 filing fee was paid in full. (ECF No. 11.)

1 due.²

2 Accordingly, it is HEREBY ORDERED that:

3 1. Plaintiff's motion to proceed in forma pauperis on appeal is DENIED;

4 2. Plaintiff shall pay the \$605.00 filing fee for the appellate action; and

5 3. The Clerk of Court is directed to serve a copy of this order on the United States

6 Court of Appeals, pursuant to Federal Rule of Appellate Procedure 24(a)(4), Case

7 No. 25-3589.

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9 IT IS SO ORDERED.

10 Dated: June 11, 2025



11 STANLEY A. BOONE
United States Magistrate Judge

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28 ² Plaintiff may also file a motion to proceed in forma pauperis in the court of appeal within 30 days after the notice
prescribed in Rule 24(a)(4). Fed. R. App. P. 24(a)(5).